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FILED
JUL 30 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 408

LOUISE M. SCUDDER, - - - - Plaintiff,

versus

COMMISSIONER OF INTERNAL REVENUE, - - - - - - Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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v.

COMMISSIONER OF INTERNAL REVENUE, - *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit reversing the judgment of the Tax Court that the petitioner Louise Scudder was jointly and severally liable with her husband Frank on joint tax returns for deficiencies and fraud penalties arising from funds he took directly or indirectly, without authorization, from a partnership owned by the petitioner and her sisters, but affirming the judgment of the Tax Court that the petitioner was jointly and severally liable with her husband on the same tax returns for deficiencies and fraud penalties attributable to unreported income from other sources not known to her.

OPINION BELOW.

The opinion of the Tax Court is reported at 49 T. C. 36 (1967) (Appendix A 18). The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 405 F. 2d 222 (1969), (Appendix A 1).

JURISDICTION.

The judgment of the Court of Appeals was entered on December 30, 1968 (Appendix A 1).

On May 8, 1969, the Court of Appeals denied the joint motion of petitioner and respondent for a rehearing (Appendix A 13).

The jurisdiction of the Court of Appeals is found in 26 U. S. Code, § 1254.

QUESTION PRESENTED.

Is a wife who signed joint income tax returns with her husband under circumstances insulating her from liability for taxes and penalties attributable to funds unlawfully taken by the husband from a partnership owned by his wife and her sisters nonetheless liable on these same purported joint returns for taxes and penalties attributable to the husband's unreported income from other sources not known to the wife?

STATUTE INVOLVED.

26 U. S. C. § 6013:

"(a) Joint returns.—A husband and wife may make a single return jointly of income taxes under subtitle A . . ."

"(d)(3) if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several,"

STATEMENT OF CASE.

Petitioner Louise M. Scudder and her sister-partners owned a wholesale enterprise which Frank Scudder, Louise's husband, managed during 1954-1958 and for several years prior thereto. Frank was entrusted with the complete control and management of every aspect of the business. A man of impeccably good reputation, he enjoyed the absolute, unquestioning trust and confidence of his wife and her sisters. Such was the confidence and trust she had in him that she never questioned his management or asked to see partnership tax returns and audits which the firm's accountants made annually.

Louise entrusted to her husband the complete control and management of their joint, and her individual financial matters, signing without question whatever her husband presented to her. She was unqualifiedly dependent upon him and amenable to his wishes and directions. During 1954-1958, Louise had been in frail health requiring substantial periods of hospitalization for a nervous disorder. With absolute trust in her

husband, Louise signed without question joint tax returns with him for the 1954-1958 tax years. These joint tax returns were prepared from information furnished entirely by Frank. Her marriage to Frank was a happy one until late 1959, when she learned of her husband's fraudulent conduct.

During 1954-1958, Frank embezzled $281,665.84 from the partnership and withdrew an additional $22,100 for fictitious travel expenses. He had $8,188.92 of additional income during these years from other enterprises which were unknown to Louise. On April 13, 1962, the Commissioner issued a notice of deficiency against Louise and her husband totaling $237,946.23, including fraud penalties, computed mainly upon money Frank embezzled from the partnership. This deficiency assessment was made despite Frank's restitution in 1958 of all but $146,000 of the embezzled funds. Thus, the tax deficiency levied against Louise was $91,000 more than the net loss to the partnership from her husband's defalcations.

Frank concealed his embezzlements by disguising them as loans on partnership financial information which was furnished to the accountants for preparation of the annual financial statement and information tax returns. Although copies of the financial statements were prepared for the partners, the accountants delivered all of them to Frank and his wife and her sisters never saw them. Frank had a power of attorney to sign the partnership tax returns.

Frank never disclosed his defalcations to his wife. She learned of them from relatives about May or June

of 1959. She was not sooner informed of her husband's conduct because it was feared that an immediate disclosure would jeopardize her health. After learning of the defalcations, Louise decided it was best to move the family from her hometown of Owensboro to Hopkinsville, Kentucky, to make a new start. This effort failed and Frank and Louise were separated in 1962 and divorced in 1963.

Louise did not benefit directly or indirectly from the funds taken by Frank from the partnership. On the contrary, her separate estate, which she had counted on him to protect and preserve for her children's inheritance, suffered substantial dimunition in value quite apart from the claims made upon her by the government.

The tax returns in question found by the Commissioner to be false and fraudulent not only understated Frank's alleged taxable income, but more significantly, they misrepresented and overstated Louise's partnership income, of which Frank was aware since he knew that the actual partnership income was overstated by the amount of his unauthorized withdrawals.

REASONS FOR GRANTING THE WRIT.

Review should be granted to consider a question of stautory interpretation important to the administration of the Federal income tax law.

Internal Revenue Code § 6013 simply provides that liability on a joint return shall be "joint and several." The Code language does not contain any exceptions or qualifications to this liability.

The courts, however, have never literally applied the unqualified language of this Code section. Spouses have consistently avoided liability upon a showing of duress, trickery and mistake. The Court of Appeals in this case correctly held that Frank's conduct was "equivalent in wrong to the fraud, trickery, and, indeed, duress which insulates its victim from joint and several liabilities" (Appendix A 8). These holdings derive not from Code language, but from general rules of law and equity (Appendix A 8).

Since such wrongs relate to the validity of the execution of the joint return, they have, until this case, resulted in exoneration of the innocent party from liability for *all* the deficiencies on the return. The Court of Appeals, however, held that Frank's conduct insulated his wife from only such deficiencies as were attributable to funds which Frank illegally took from the partnership. The decision left Louise jointly and severally liable for the deficiencies attributable to his unreported income from other sources.

The Court of Appeals' concept of partial liability for deficiencies on joint returns was rationalized as follows:

> "Under the special facts of this case, we do not consider that a holding by us that the monies withdrawn by Frank Scudder were not taxable income for which his victimized wife must now pay, would run counter to *James* v. *United States, supra*" (Appendix A 11).

However, the main thrust of the decision is that the executions of the joint returns were the product of con-

duct equivalent to duress which insulates the victim from liability on purported joint returns.

The legal premise for relief from liability on purported joint returns is that the executions of the returns are not legally effective. A spouse is either jointly and severally liable for all the deficiencies on the return, or for none of them. Thus, the Court of Appeals' decision is the very first one which departs from this sound legal premise.

Justice still eludes Louise Scudder. The Court of Appeals did mitigate the appalling harshness of the result of the Tax Court decision, but the law of this case requires complete relief. Moreover, the legal implications of the Court of Appeals' failure to grant such relief imperil the proper administration of Code § 6013.

CONCLUSION.

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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